## REMARKS

Claims 1-25 are pending in this application. Claims 1, 9, 23 and 24 were rejected under 35 U.S.C. 102(b) as being anticipated by Kirouac. Claims 2-4, 8, 10, 11, 15-18, 22 and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kirouac in view of Jones. Claims 5 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kirouac in view of DeKoning. Claims 1, 6, 9, and 13-15 are currently amended. Reconsideration and further examination are respectfully requested.

Claims 1 and 9 distinguish Kirouac because the server establishes communication with the programmable device, and also because the invention is implemented in a computer program. According to Kirouac, a user accesses the data store (28) to upgrade one or more programs. Col. 4, lines 67-68. If it is desired to upgrade one of the programs the user accesses the central computer system and enters appropriate passwords. Col. 7, lines 10-15. In other words, the user's software is not upgraded until the user manually establishes communication with the data store and manually initiates the upgrade. As discussed in the specification at page 2, lines 13-28, an automated update can be more convenient and less costly than a manual update. The presently claimed invention is automated rather than manual, as recited in the preamble of claim 1 and the body of claim 9, and the server establishes two way communication between the server and the programmable device, rather than a user establishing communication with a server. Consequently, the need for a user to establish communication as taught by Kirouac is obviated.

Claim 1 also distinguishes Kirouac by testing operation of at least a portion of the updated software. The Office suggests that this feature is taught in Kirouac at Col. 2, lines 13-26. However, the cited passage actually teaches that transmission of the changes is verified. Verifying transmission does not imply that operation of the software is tested, as presently claimed, but

rather simply that the software upgrade was actually transmitted. Hence, claim 1 further distinguishes Kirouac by reciting that at least a portion of the updated software is tested.

For the reasons stated above, claims 1 and 9 are allowable over the cited references. Withdrawal of the rejections of those claims is respectfully requested. Claims 23 and 24 are dependent claims which further distinguish the invention, and are also allowable for the reasons stated above.

Claim 15 distinguishes the combination of Kirouac and Jones for the same reasons stated above. In particular, neither Kirouac nor Jones describes an automated upgrade in which communication is established by a server that upgrades software without user intervention. Rather, both Kirouac (Col. 4, lines 67-68; Col. 7, lines 10-15) And Jones (Col. 2, lines 24-27) describe manual updates which are initiated by a user at the time of update. In contrast, claim 15 recites "a computer program product ... for updating software on a programmable device, comprising instructions operable to cause a programmable processor to: establish communication with the programmable device over a two way communications medium; ... update software on the programmable device ... and test the operation of at least a portion of the updated software on the programmable device." Withdrawal of the rejection of claim 15 is therefore respectfully requested. Claims 2-4, 8, 10, 11, 15-18, 22 and 25 are dependent claims which further distinguish the invention and are also allowable for the reasons stated above with regard to their respective base claims.

Claims 5, 12 and 19 are also allowable for the reasons stated above with regard to their respective base claims. Withdrawal of the rejections of those claims based on combinations of Kirouac, DeKoning and Jones is respectfully requested. Correction of the informalities regarding

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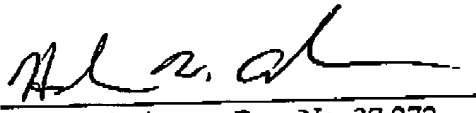
claims 6, 13 and 14 which were the subject of the rejections under 35 U.S.C. §112 have been

made and are deemed to be self-explanatory.

Applicants have made a diligent effort to place the claims in condition for allowance.

However, should there remain unresolved issues that require adverse action, it is respectfully

requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-6664 so

that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now

considered to be in condition for allowance and such action is earnestly solicited.

                                        Respectfully Submitted,


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Date

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